



**MINUTES OF THE MEETING OF THE
LEON VALLEY ZONING COMMISSION**

November 18, 2014

The meeting of the Leon Valley Zoning Commission convened at 6:30 p.m. on Tuesday, November 18, 2014, in City Council Chambers at 6400 El Verde Road, Leon Valley, Texas.

I. Roll Call

Present were Chairman Claude Guerra III, 1st Vice-Chair Olen Yarnell, 2nd Vice-Chair Phyllis McMillan and Members Hal Burnside, Pedro Esquivel, Nicole Monsibais, David Jordan and Alternate Member Larry Proffitt. Absent and unexcused were Alternate Members David Edwards and Tony Westrich. Also present was Kristie Flores, Director of Community Development, acting as recording secretary.

II. Approval of the Minutes – October 28, 2014

2nd Vice-Chair Phyllis McMillan noted that an administrative change was required to properly record the motion and the 2nd of the motion tabling the discussion of “family” and “parking” from October 28th. 1st Vice Chair Olen Yarnell made a motion to approve the minutes of October 28, 2014 as amended. Commissioner Pedro Esquivel seconded the motion and the motion passed unanimously by voice vote, 7-0.

III. Public Hearing and Consideration of a Zoning Amendment to Chapter 14, “Zoning Ordinance” Regarding definitions and permitted uses in general.

Chairman Claude Guerra III opened the second discussion of the zoning amendments regarding “parking” and “family.” Staff noted that the discussion began on October 28th but was tabled so that staff could provide any supporting documents that may demonstrate the need for the proposed zoning amendments. Staff noted that the amendments resulted from discussions by Council regarding complaints in neighborhoods of too many persons living in homes and too many commercial vehicles parking in residential areas. Staff presented the Commission with the Citizen Action Team (CAT) report, noting that the CAT was initiated in July of 2014. The report presented a listing of complaints regarding “parking” and “family” (too many persons living in homes). Staff further explained that the Commission met their legal requirements for a public hearing at the last meeting, but also noted that public discussion was on the agenda for the evening as requested by the Commission. Staff noted that Attorney Clarissa Rodriguez was also available for legal questions as requested by the Commission. Staff noted that the CAT was initiated to address customer complaints and enhance customer service. Staff began the discussion and consideration by revisiting the definition of “family” in the Zoning Code. Staff compared the present definition with the proposed definition.

Commissioner Nicole Monsibais asked staff to outline the differences in definitions. Staff noted that the proposed definition adds more clarification in regard to the types of family relationships (i.e. adoption, guardianship) and per the city’s attorneys provides better defensible language were the definition questioned in a court of law.

Commissioner Nicole Monsibais referenced Vernon’s Code Chapter 211, asking how “family” was defined in the Code. Attorney Clarissa Rodriguez addressed the question noting that “family” was not defined in Chapter 211. She explained that the proposed definition of “family” was created from legal analysis by their office and was based on case law at the State and Federal level. Attorney Rodriguez noted that other similar cities were also used to create a definition specific to Leon Valley.

Commissioner Nicole Monsibais asked if the definition of "family" was similar or related to the one in the Family Code. Attorney Rodriguez noted that the proposed definition was not related, and that it was very different from the Family Code because it is for zoning use.

Commissioner Pedro Esquivel asked if there was a limit on the number of blood related persons. Attorney Rodriguez noted that there was not a limit.

2nd Vice-Chair Phyllis McMillian asked how the related family members could even be determined or enforced. She further questioned if individuals would be asked for birth certificates and how it would be enforced. Attorney Rodriguez noted that the responsibility was on code enforcement and investigation by the City. Attorney Rodriguez further explained that a resident may have suspicions that activities in a residence do not meet the definition of "family" or that there may be commercial vehicles and so Code Enforcement receives the report and begins investigating what is occurring in the home.

2nd Vice-Chair Phyllis McMillian asked how these instances have been addressed in the past. Staff explained that the complaint is received by Code Enforcement and then they investigate the situation. If there appears to be a zoning concern, Code Enforcement informs staff and staff sends a zoning letter to the property owner which reminds them of the zoning designation and cautions against violations. The letter also explains that any non-residential use of the property will result in a citation and fines.

Staff gave an example of a household that was housing a number of massage therapy students. Staff noted that when the home was investigated there were students but the current code notes that up to six (6) unrelated persons can live in the home in addition to any number of related family members for totals beyond 6, even 8, 10, 12, or 14. Staff explained that this was the reason that the number of unrelated persons was reduced from 6 to 3 in the proposed definition.

Commissioner Nicole Monsibais noted that she felt the number was arbitrary and based on the different sizes of properties limiting to three (3) unrelated persons did not make sense.

2nd Vice-Chair Phyllis McMillian asked for clarification noting that the way the definition is written with the word "OR" it appeared to be two separate things, but Staff was saying that was not separate. Staff noted that the semantics were confusing and turned the discussion to Attorney Rodriguez for clarification.

The attorney, staff and Commission discussed the sentence structure of the "family" definition and how a period could be used to separate thoughts for clarity. Staff noted that the current definition allows unlimited related persons living together, plus an addition six (6) people that are not related.

2nd Vice-Chair Phyllis McMillian noted that she did not understand why there needed to be a limitation and why the number of unrelated persons went from six (6) to three (3). Staff noted that three (3) was literally half of the original number and was done to limit the number of occupants overall as requested by City Council.

Attorney Rodriguez also noted that the caution in the use of the terms related and non-related comes back to the way that courts define family and so if possible it is best to go with other terms.

1st Vice-Chair Olen Yarnell asked based on the current definition how many related persons could live in a household. Attorney Rodriguez noted two (2) or more and unlimited overall. She reiterated that the limitation proposed was on the unrelated individuals as requested for evaluation by City Council.

Commissioner Hal Burnside asked for clarification regarding the terms that constituted "family" plus

two or three other unrelated people and asked if this was considered a "family." Attorney Rodriguez confirmed that this scenario would fall under the category defined as "family."

2nd Vice-Chair Phyllis McMillian felt that the definition needed to be written in a way that did not appear mutually exclusive but was two separate and definite thoughts.

Commissioner David Jordan asked what the constitutionality of the current definition of "family." Attorney Rodriguez noted that the current definition could pass, but the proposed definition is stronger if there is a challenge.

Commissioner David Jordan also asked what the Zoning Commission was being tasked to do. Staff noted that the Commission was doing exactly what they needed to; evaluating whether there needs to be an amendment to the Zoning Code and if so, what the amendment should be. Attorney Rodriguez added that there were other legal remedies for addressing exceptions or variances to the Zoning Code via the Board of Adjustment.

Commissioner David Jordan noted that as the President of his Homeowner's Board he understands that complaints are received but he wanted to make sure that changes were not made based on one complaint. He also explained that he did not want to violate the personal rights of someone who wants to house or foster young people to help them with school or mentor them.

Commissioner Hal Burnside noted that there was an incident listed on the report which indicated that there was a home for disabled children with 9 cars parked. He asked if the disabled children in the home were a violation and staff indicated that it was not a violation and was covered by other areas of the Code pertaining to child care and homes for those with disabilities. It was also noted that the cars parked in the street were also not a violation.

Commissioner Phyllis McMillan noted that the report indicated that although there were complaints, violations were not found upon investigation.

The Commission questioned the need for the Zoning Amendment and Staff went on to explain that the CAT Report was just one way that complaints were received. Staff noted that the CAT members were tasked with improving customer service in the City, but that Staff also received complaints by phone on numerous things, fences, sidewalks, streets, drainage, etc... Staff further explained that the Mayor and Council also had monthly coffees and meetings where concerns were discussed. Staff noted that the consideration of the Zoning Amendments appeared to be a mechanism to try to address issues that have come before Council whether by one or two persons on different occasions and whether or not it was a concern that bothered some persons and not others. Staff further explained that by going through the process and researching and examining all aspects of what was being requested, the Council was being proactive to community concerns. Staff noted that the Commission could recommend approving the proposed amendments, recommend denial of the amendments if they saw no need for it, or propose different definitions/revisions.

Chairman Claude Guerra III noted that based on the CAT report, limited complaints and discussion he was not convinced on the need for an amendment. He requested that perhaps staff and the attorney could revisit the definition because as it stood, he did not know that he would vote for the amendment. He explained that in his opinion there were other things such as unkempt yards that were visually terrible that needed to be addressed more so than proposing a change to the definition of "family."

Commissioner Pedro Esquivel agreed and noted that if the CAT report was the extent of the issues then he did not see a need for any change because there are already codes in place to address the concerns and the report indicated that there was no violation. He supported enforcing the current ordinances.

Commissioner Nicole Monsibais noted that she appreciated the elaboration of some of the language in the new definition to be defensible legally, but was not comfortable reducing the number of persons living together.

1st Vice Chair Olen Yarnell noted that he was still trying to understand why such an amendment was needed. Staff noted that there was direction from Council at the meeting of September 8th to send the proposed amendments to the Zoning Commission for consideration and recommendation which is required by State law for Zoning Amendments. Staff also noted that the Commission requested additional information and the CAT Report was sent to them to review, staff also noted three (3) other occasions where complaints were received by the Community Development Office by 1) a Board of Adjustment Member, 2) massage therapy students on Poss and 3) Monte Robles Park, all of which were concerns regarding too many persons living in a home. 1st Vice-Chair Olen Yarnell explained that he did not feel that who was living in a home was his business. He noted that his neighbor had four (4) cars but it did not bother him.

Staff noted that there were regulations for businesses operated out of homes and commercial vehicles if someone suspects there may be a business in a home. Staff explained that the legal authority to send the residents a zoning letter, which reminds the occupants of the residential use of the property and spells out prohibitions and penalties for failure to comply, comes from the Zoning Code.

Commissioner Hal Burnside noted that if there were ten (10) students and a person such as Mr. Jordan was completely paying their way then it would be different from a boarding home where people pay to live, get meals and sleep. Commissioner Burnside wanted to know what "not for profit" meant in the context of the proposed definition. Attorney Rodriguez noted that under the law you cannot profit from the rental of rooms in a residence. She also distinguished between "incidental" in terms of the law and one to two rooms, any more rooms for rent is not considered incidental under the law. Attorney Rodriguez noted that there were separate regulations for boarding homes, community homes and assisted living homes. She elaborated noting that the amended definition as presented was based on findings in a Supreme Court case and could be legally enforced by the City; not based on a policy decision.

Commissioner Larry Proffitt noted that his confusion with the amended definition was in reference to the kitchen. He asked why one kitchen, what if there were two kitchens and what the health considerations were. Attorney Rodriguez noted that the definition that she looked at in drafting the amendment for Leon Valley originally read "one kitchen living and cooking together as a single-house-keeping unit." She added that the amendment could be changed to include "living and cooking together."

2nd Vice-Chair Phyllis McMillan noted that a decision needed to be made as to where to go from the point in the discussion that they were in. She noted that the definition could be sent back to staff to be rewritten, it could be accepted the way it was or recommended for denial. She noted that whichever recommendation was made the Council could agree with the recommendation or vote contrary to the recommendation which has been done in the past regardless of all of the efforts made and research done by the Commission.

Commissioner Nicole Monsibais asked for clarification in the definition regarding "cost-sharing." Attorney Rodriguez noted that cost sharing was related to "not for profit" to reinforce that profit cannot be made on a room in home for whatever reason.

Chairman Claude Guerra III opened the public hearing at 7:50 p.m.

Mike Davis, Jr., 6031 Walking Gait addressed the Commission and noted that he was agitated with the proposed amendment because of his background in real estate. He explained that the profit portion of the amendment goes against his property rights. He admonished the Commission to recommend denial of the amendment. He also noted concern over the severe penalties for violation of the ordinance. He stated that he does not feel that government should be getting involved with who lives in homes constitutionally or how rent is collected for private property and asked for the amendments to be rejected.

Being no further discussion, Chairman Guerra III closed the public hearing at 7:59p.m.

Staff began the discussion related to the parking of commercial vehicles in residential areas by noting that existing regulations: 1) commercial businesses are not allowed in the R-1 zoning district, 2) some home occupations are allowed but by appointment and in conformance with home occupation parking (at no time should the residence appear to be a business), 3) commercial vehicles brought home for lunch or after business hours is allowed, 4) if vehicles are parked longer than 48-hours they are subject to penalties per the City's Parking, Standing and Stopping ordinance (Chapter 12).

Staff continued with the presentation of "parking" explaining the current and proposed definitions. The Commission touched on the term "off-street" parking and how this could be confusing. Attorney Rodriguez noted it was simply a legal term of art and could be revised but also advised that the number of incidents of the use of the term in the Zoning Code should be considered and amended as well if it is the consensus of the Commission.

Commissioner Hal Burnside requested clarification of the term "off-street parking" noting that it appeared contrary to the intended meaning. Staff and Attorney Rodriguez clarified that it meant parking along a street, in front of a house. Staff elaborated and noted that per current code each home was required two (2) off-street parking spaces.

1st Vice-Chair Olen Yarnell suggested that the word "off" be removed and "street parking" could be utilized instead.

Commissioner Pedro Esquivel noted that in returning to the complaints that had been submitted there appeared to be regulations in place already to address the matters that come up. On a personal note he added that he has a number of children in his family that come to visit and he would expect that they would be allowed to park along the street. He noted that he had an issue limiting parking on the street or in front of homes. He also noted that there are ordinances which do not allow blocking the driveways and so he did not understand the need for a change.

Chairman Claude Guerra III noted that his neighbors park in front of his home and he does not mind. He explained that it is a public street and not his property. He further noted that he understood how blocking a driveway or a fire hydrant could create an issue. Commissioner Pedro Esquivel noted that the Police could be called for the driveway or hydrant violations.

Phyllis McMillan noted that nothing was mentioned about ownership of the vehicles. She explained that the regulation very generally noted that if there are 10 houses on the street for example then 20 cars can be parked because two (2) cars are required for every home. She also questioned who would determine who owns the cars and would check them.

Commissioner David Jordan noted that he understood the need for regulation in terms of blocked streets or emergency vehicles being impeded. He noted that he wanted to be sure that the intention

to amend the ordinance was warranted and not just address commercial vehicles because of their size or and how they look. He questioned who enforced the 48-hours that vehicles are parked. He noted that he felt there should be free access to the public streets.

Commissioner Nicole Monsibais asked for staff to re-state why parking needed to be addressed. Staff noted that it was due to the complaints about too many commercial vehicles parked in neighborhoods such as Old Mill and Monte Robles Park.

Staff elaborated on parking in context of the construction of the home. Staff noted that each residential area of the Zoning Code had a particular description and regulations regarding lot size, square footage, accessory structures, lighting and many other items. Staff noted that the two (2) required off-street parking spaces for each home ensured that at a minimum, there would be an additional two (2) parking spaces for each home in addition to driveways and garages.

Nicole Monsibais noted that she could not support the amendment because it was taking permissive language and making it restrictive, when the additional parking was necessary especially in denser neighborhoods.

Commissioner Pedro Esquivel noted that he had seen instances where there are signs on certain streets that say "no parking on this block." He asked if there was some other way to address vehicle parking.

Staff noted that the City Attorney Charlie Zech had noted at a Council meeting that the person(s) with an issue regarding parking could submit a petition for no parking signs with signatures and proof of hardship to defend and potentially have no parking signs installed in certain areas. Commissioner Pedro Esquivel noted an example on a portion of Poss Road where no parking signs were installed.

1st Vice-Chair Olen Yarnell noted that in some instances residential vehicles appeared to be worse than commercial vehicles and so he did not see why commercial vehicles needed to be singled out.

Commissioner Larry Proffitt noted that his neighbor parked their commercial vehicles in the driveway and personal vehicles in the street. He further noted that the way the Code is written ensures there are two (2) additional spaces which is a protection the way it is presently written, rather than how it is proposed.

1st Vice-Chair Olen Yarnell proposed the following definition language for "family": "an individual or two or more persons living together and occupying a single house-keeping unit with a kitchen facility." Attorney Rodriguez noted that the proposed revision by Mr. Yarnell was too broad because without spelling out the definition it is left open for everything to be included that is not addressed.

2nd Vice-Chair Phyllis McMillan noted that there are legal cases with lawsuits which indicated that the terminology used was necessary and was an important part in defining the Zoning Code. The Attorney agreed that the courts had determined language that was acceptable and defensible under the law.

After other brief Commission discussion, and the time being 9:00p.m., the Chairman Claude Guerra III noted that the primary discussion points were noted. He then requested a motion in regard to the parking regulations portion of the discussion.

Commissioner David Jordan made a motion to recommend that the parking zoning regulations remain as they are presently written in the Zoning Code. Commissioner Pedro Esquivel seconded the motion. 2nd Vice-Chair Phyllis McMillan asked if the regulations included all residential areas. Staff confirmed that it pertained to residential areas: R-1, R-2, R-6 and R-7. The Chairman asked if there were additional questions, being none, he called for roll-call vote. The motion passed unanimously by voice.

vote, 7-0.

Chairman Claude Guerra III then proceeded to the "family" amendment.

Commissioner Hal Burnside made a motion to recommend that the "family" amendment be rewritten by staff and the attorney to create a more suitable definition with the suggestions by the Commission and further the definition is to maintain six (6) unrelated persons rather than limit it to three (3) unrelated persons. 2nd Vice-Chair Phyllis McMillan seconded the motion.

Commissioner David Jordan clarified that the definition of "family" would still be pending. 2nd Vice-Chair Phyllis McMillan clarified that a rewrite was being requested.

Commissioner Pedro Esquivel noted that action was being postponed and made a friendly amendment to include the action of tabling with the provisions as specified by Commissioner Hal Burnside. Commissioner Hal Burnside noted that this was the intent and agreed with the amendment by Commissioner Pedro Esquivel. The Commission unanimously agreed to the amendment to include the action of tabling in the motion, by voice vote 7-0.

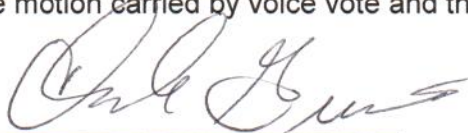
The primary motion to include tabling of the discussion of "family" was then brought forth for consideration as follows: Commissioner Hal Burnside made a motion to recommend tabling of the discussion of "family" which was to be rewritten by staff and the attorney to create a more suitable definition with the suggestions as discussed by the Commission, and further the definition is to maintain six (6) unrelated persons rather than limit it to three (3) unrelated persons. 2nd Vice-Chair Phyllis McMillan seconded the motion. The motion passed unanimously by voice vote, 7-0.

IV. Executive Session in Accordance with the Texas Local Government Code

There was neither item, nor action necessary for this session.

V. ADJOURN

Commissioner Pedro Esquivel made a motion to adjourn, seconded by Commissioner David Jordan. The motion carried by voice vote and the meeting was adjourned at 9:12 p.m.



CHAIR



STAFF